IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3259 OF 2007

Shri Harish Dhaniram Sharma ..Petitioner.

Vs.

Shri Tukaram Dhondiba Gunjal ..Respondent.

Mr.Rajesh More for the Petitioners.
Mr.V.G.Peshne for the Respondent.

CORAM : A.S. OKA, J.
DATED : 11TH JUNE, 2006

P.C. :

Heard Advocates appearing for the parties.

2. The Petitioners (original Defendants) have taken exception to the order dated 21.2.2007 passed by the learned trial Judge by which the application made by the Petitioners (Defendants) at Exhibit "35" for setting aside the order passed to proceed with the suit without written statement has been rejected.

3. The submission of the learned Advocate for the Petitioners is that on 9.11.2006 though the order was passed by the trial Court to proceed with the suit without the written statement, on that very day the written statement was tendered in the Court by

the Petitioners. He submitted that considering this fact, the trial Court ought to have allowed application at Exhibit "35".

4. The learned Advocate for the Respondent has invited my attention to the averments made in the application at Exhibit "35" and pointed out that on 28.9.2006, 4.10.2006 and 4.11.2006 the trial Court did not grant time to the Petitioners to file written statement. He submitted that the statement made in the application was factually incorrect. He submitted that there were no exceptional circumstances brought on record by the Petitioners for seeking extension of the time to file written statement.

5. I have considered the submissions. The first Petitioner was served with the suit summons on 21.6.2006. The Petitioners did not file the written statement within the time provided by Rule 1 of Order VIII of the Code of Civil Procedure, 1908.

6. It is the case of the Petitioners that the written statement was tendered on 9.11.2006. On the very day, the trial Court passed an order to proceed

with the suit without the written statement. Considering the fact that on 9.11.2006 an order was passed by the trial Court to proceed with the suit without written statement, the written statement tendered on the same day could have been accepted by the trial Court. The amended provision Rule 1 of Order VIII of the Code of Civil Procedure, 1908 is held to be directory. Considering the aforesaid facts, the trial Court ought to have allowed the application at Exhibit "35".

7. The Petitioners have already deposited an amount of costs of Rs.5000/- in this Court. Considering the prejudice to the Respondents, while allowing the petition filed by the Petitioners, the total amount of costs payable by the Petitioners will have to be quantified at Rs.7500/-.

8. Hence, the following order is passed :-

i) The impugned order dated 21.2.2007 is quashed and set aside and the application at Exhibit "35" is hereby allowed.

ii) The written statement tendered by the

Petitioners shall be taken on record.

iii) The Petitioners are directed to pay to the Respondents a further amount of Rs.2500/- by way of costs within a period of four weeks from today. The deposit of the said amount with the trial Court will be a sufficient compliance. The payment of the said amount will be a condition precedent.

iv) It will be open for the Respondents to withdraw the sum of Rs.5000/- deposited in this Court by the Petitioners.

v) The trial Court to dispose of the suit as expeditiously as possible and preferably on or before 31.1.2008.

vi) Writ Petition is partly allowed on the above terms.

vii) Parties to act on an authenticated copy of this order.

(A.S. OKA, J.)